

Business Records Corp. and International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, AFL-CIO, Petitioner. Case 16-RC-9285

November 13, 1990

DECISION AND DIRECTION

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in an election held April 27, 1990, and the hearing officer's report recommending disposition of them. The election was held pursuant to a Stipulated Election Agreement approved by the Regional Director on March 29, 1990. The tally of ballots shows 16 for and 15 against the Petitioner, with 2 challenged ballots.

The Board has reviewed the record in light of the exceptions and brief and has adopted the hearing officer's findings and recommendations¹ only to the extent consistent with this Decision and Direction.

The Petitioner challenged the ballot of employee Mark Sutton, contending that Sutton was an employee of the electronics shop and thus, under the terms of the stipulation, excluded from the appropriate unit.² The hearing officer found that the evidence presented was too inconclusive to permit a determination of whether Sutton was an employee of the electronics shop, and hence he made no finding on this issue. Although finding the appropriate unit description to be clear and unambiguous and acknowledging that Sutton was an inspector, the hearing officer went on to recommend that the challenge to Sutton's ballot be sustained based on his finding that Sutton was a technical employee, lacking a community of interest with other inspectors in the stipulated appropriate unit.

The Employer excepts to the hearing officer's recommendations and argues, *inter alia*,³ that finding a lack of evidence regarding what electronic shop employees do, the hearing officer should have overruled

the challenge, in deference to the Board's longstanding policy favoring the enforcement of stipulated election agreements. It further argues that the community-of-interest analysis is improper when, as here, it reopens a clear and unambiguous unit stipulation. We agree with this reasoning and therefore reverse the hearing officer's finding to the contrary.

The hearing officer found that the stipulated appropriate unit description, which included inspectors and lead inspectors, but excluded electronic shop employees, was clear and unambiguous. We agree.⁴ Given this finding, the sole determination to be made, regarding the challenge to Sutton's ballot, is the factual question whether Sutton is an employee of the electronics shop and hence a member of an excluded category of employees. This is in accord with the Board's well-established policy not to disturb stipulated appropriate units when that stipulation does not contravene express statutory provisions or established Board policy and when the stipulation is clear and unambiguous.⁵ Because the hearing officer concluded that the record evidence was insufficient to establish that Sutton was an electronics shop employee, and because the Petitioner did not contend that Sutton was a member of any other excluded category of employees of the stipulation, we find that Sutton is properly in the unit.⁶ Accordingly, we overrule the challenge to Sutton's ballot and direct that it be opened and counted.

DIRECTION

IT IS DIRECTED that the Regional Director for Region 16 shall, within 14 days of the date of this Decision and Direction, open and count the ballots of Jeff Rezentes and Mark Sutton, and prepare and serve on the parties a revised tally of ballots. Thereafter, the Regional Director shall issue the appropriate certification.

¹In the absence of exceptions we adopt, *pro forma*, the hearing officer's recommendation to overrule the challenge to the ballot of employee Jeff Rezentes.

²The appropriate unit description is:

INCLUDED: All regular press operators, maintenance and/or tooling specialists, graphic artist, inspectors, lead inspectors, shipping/receiving employees, day shift lead (rotary), employed by the Employer at 4301 Wiley Post Road, Addison, Texas.

EXCLUDED: All other employees, including office clerical, professional, electronic shop, guards, watchmen, and supervisors, including swing and graveyard supervisors, as defined in the Act.

³The Employer also contended that the grounds on which the hearing officer sustained the challenge to Sutton's ballot were not raised, and thus were waived, by the Petitioner. Further, it contended that Sutton did have a substantial community of interest with other bargaining unit employees, despite his technical knowledge.

Because we overrule the challenge to Sutton's ballot based on our agreement with the Employer's reasoning in its initial contention described above, we find it unnecessary to pass on these remaining contentions.

⁴Finding a clear and unambiguous unit, we proceed on the premise that an inspector or lead inspector is not an electronics shop employee and conversely that an electronics shop employee is not an inspector or lead inspector. We take these employment categories as mutually exclusive, because if an employee fell within both, we would not be confronted with a clear and unambiguous unit, but rather with an overlap between included and excluded employees and hence an ambiguous unit description.

⁵See *Granite & Marble World Trade*, 297 NLRB 1020 (1990); *A/Z Electric*, 282 NLRB 356 (1986); *Hollywood Medical Center*, 275 NLRB 307 (1985); *SCM Corp.*, 270 NLRB 885 (1984); *White Cloud Products*, 214 NLRB 516 (1974); *Tribune Co.*, 190 NLRB 398 (1971).

⁶We also find Sutton to be an inspector and hence affirmatively included in the stipulated unit. Throughout his report, the hearing officer identified Sutton as an "inspector," but found, not "as that term is applied to those employees so identified and who voted without challenge at the election." We are convinced, however, that the record evidence adequately supports a finding that Sutton is an inspector, notwithstanding the hearing officer's finding that his skills differ somewhat from those of the other inspectors. The hearing officer's finding is irrelevant when, as here, the unit stipulation is clear and unambiguous, and Sutton comes within its language.